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THE INTERIM

SEPTEMBER 1997

HELENA, MONTANA

VOL. XI NO. 4

ADMINISTRATIVE CODE COMMITTEE

First Meeting on September 12...The first meeting of the Administrative Code Committee for this interim been scheduled for Friday, September 12, at 10 a.m., in Room 108 of the State Capitol. The tentative agenda for the meeting includes:

- ▶ election of presiding officer and vice-presiding officer;
- ▶ discussion of the Committee's function;
- ▶ discussion of 1997 legislation affecting the Montana Administrative Procedures Act;
- ▶ a request to agencies to identify and repeal rules enacted under or implementing MCA sections that were repealed in 1997;
- ▶ county approval and withdrawal of approval of a municipal extension of jurisdiction for building code purposes (HB 388); and
- ▶ discussion of Committee interpretation of an administrative rule regarding the requirement of a holding tank in addition to a well in a subdivision.

For further information about the Administrative Code Committee, please contact John MacMaster, Legislative Services Division, (406)444-3064.

LEGISLATIVE SERVICES DIVISION

LEGAL SERVICES OFFICE

Ballot measures received:

- ▶ Repeal state lottery

Note: pursuant to 13-27-202(2), MCA, copies of correspondence are available through the Secretary of State.

Codification:

Codification work has been completed and the Code is being printed. Codes should be received by subscribers by mid-September.

ELECTRIC UTILITY RESTRUCTURING TRANSITION ADVISORY COMMITTEE

Subcommittee Meets to Develop Work Plan...The Work Plan Subcommittee of the Electrical Industry Restructuring Transition Advisory Committee (TAC) met at the State Capitol on July 30 to devise structures and methods for fulfilling statutory duties under Senate Bill No. 390.

Three general purposes will govern the ongoing process of developing a detailed plan for TAC and its staff: oversight of the transition process; education for Committee members as well as the members of the Legislature and other interested persons; and fulfillment of statutory reporting requirements. With respect to education, TAC's "mission" is to facilitate and monitor rather than duplicate or contradict the efforts of energy suppliers in the private sector, who, under SB 390, are charged with the responsibility to educate the public about the transition to a competitive market for electricity.

The TAC will maintain an ongoing interest in the tax and tax policy implications of restructuring. Select members and staff will provide liaison between TAC and both the Revenue Oversight Committee and the Interim Property Tax Committee.

The Subcommittee will recommend to the TAC that two additional subcommittees be formed, one to manage educational functions, the other to address the variety of issues incorporated within Universal Systems Benefits as defined in section 1 of SB 390.

TAC to Consider Producing Newsletter...Staff will prepare and deliver to the TAC at its October 6-7 meeting a prototype newsletter that will, if adopted, serve both as a tool for educational outreach and as a component of the quarterly and annual reports to the Legislature and the Governor required by SB 390. The newsletter will include such items as a calendar of events and activities, updates from the various agencies and interest groups represented on the Committee (investor-owned utilities, cooperatives, the Public Service Commission, and others), subcommittee reports, pertinent energy market data, and topical features (e.g., on the status and substance of various pilot programs in Montana and other states).

Subcommittee Hears Proposal for Conference...The Subcommittee heard a proposal from Chris Imhoff and Jim Nybo for a Helena-area conference on the impacts of restructuring on primarily residential consumers. The members decided to present the proposal to the full Committee at the October meeting but did not vote to favorably recommend funding support. Subcommittee Presiding Officer Bill Ryan also

distributed a letter from Deborah Smith, a Helena attorney who represents the Natural Resources Defense Council and the Northwest Renewable Energy project. The letter included an offer to assist the Committee by providing information and testimony during the interim.

TAC Meeting Schedule...In lieu of the previously scheduled TAC meetings on September 11 and October 24, the next meeting will take place on October 6-7 in Billings, in conjunction with the annual convention of the Montana Electrical Cooperatives Association. In addition to a presentation on the contemporary role of co-ops in the state, and their response to SB 390, the meeting will focus on the historical evolution of the electrical energy industry in Montana and the surrounding region, the status and prospects of energy assistance programs for low income consumers, and emerging technology in the regional energy sector.

Future meetings of the TAC (tentatively scheduled for Jan. 23, April 24, July 24, Sept. 18, and Oct. 23 in 1998) will focus on licensing issues and procedures, the role of power marketing firms, the aggregation of small-scale consumers into power purchasing groups, reciprocal relations in and among neighboring states, pilot programs, the funding and administration of universal benefits programs, and energy conservation.

For further information, contact Stephen Maly by phone in the Research Office at Legislative Services (444-3064) or send an e-mail message to <smaly@mt.gov>.

INTERIM PROPERTY TAX COMMITTEE

Committee to Meet in Eastern Montana...The Interim Property Tax Committee will meet in Miles City on Thursday, September 18 and in Forsyth on Friday, September 19 to continue its investigation of Montana's property tax system.

The Miles City meeting is a two-part affair. A Committee work session will be held 1- 5 p.m. in Room 106 at Miles Community College for the purpose of developing more information, knowledge, and understanding of Montana's property tax system. Following a break for dinner, the Committee meeting will continue as a public hearing to solicit public views and ideas on the property tax system. The public hearing portion will be from 7 - 9 p.m. (approximately) and will also be held in Room 106 at Miles Community College.

The Forsyth meeting will be a public hearing parallel to the Miles City hearing. The Forsyth hearing will be Friday, September 19, from 9 a.m. - Noon (approximately) at the Forsyth High School Auditorium. Legislators from the Miles City/Forsyth area will be contacted by staff and are encouraged to foster attendance and participation by persons in the area who may have particularly beneficial insights or ideas for the Committee's consideration.

If you have questions or comments regarding the Miles City or Forsyth meetings, please contact Senator Stang, Presiding Officer, at 649-2414, or Dave

Bohyer at 444-3064. Additionally, Senator Devlin (486-5533) has volunteered to provide information as the Miles City/Forsyth area includes parts of his Senate district.

Because the Committee has decided to meet in various locales around the state approximately every 6-7 weeks, there will probably be a meeting in nearly every legislator's general vicinity. For example, the Committee's meeting scheduled for October 30-31 will be held in Dillon and Butte with a December meeting scheduled in Hamilton and Missoula. If you would like a copy of the Committee's meeting schedule for the remainder of the interim, contact Dave Bohyer at the LSD (444-3064) or by e-mail at <dbohyer@mt.gov>.

CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE

Committee to Meet in Deer Lodge...The Committee on Correctional Standards and Oversight will meet next on October 2 and 3 in Deer Lodge. On October 2, the Committee will receive a tour of Montana State Prison, including the new boot camp and the prison industries. On October 3, the Committee will hold a meeting at the Community Center, 406 Cottonwood, Deer Lodge. The Friday meeting will begin at 9 a.m. and include information from the Department of Corrections on the various private contracts that the Department has with county jails and other states to house Montana inmates and on issues related to classification, medical services, and programming. There will be reports from the Private Prisons Subcommittee and from the Planning and Projections Subcommittee on their proposed work plans and products.

Subcommittees to Meet...The Private Prisons Subcommittee will meet for the first time September 6 in Helena. The Planning and Projections Subcommittee will have its first meeting in mid-September. The Jail Standards Subcommittee will be meeting in conjunction with the Montana Sheriffs and Peace Officer's Association on October 9 and 10 in Bozeman. The next Juvenile Issues Subcommittee meeting will be in mid to late October.

If you need additional details on subcommittee meetings or are interested in being placed on the interested persons list for the Correctional Standards and Oversight Committee or its subcommittees, please contact Susan Fox at 444-3064 or <sfox@mt.gov>.

GAMBLING COMMISSION

Gambling Commission Coming Soon...House Bill No. 615 (Chapter 494, Laws of 1997) established a 5-member, Governor-appointed commission to oversee, publicize, and report on a thorough study of the socioeconomic impacts of gambling

in Montana. The commission will include three social scientists, a mental health professional, and a business owner. As of the publishing date of this *INTERIM*, the Governor had not announced any appointments; Legislative Services staff anticipate that the first meeting of the Commission will take place very soon after the selection process has been completed. Thereafter, the members have the statutory discretion to convene as often as they think necessary prior to September 1, 1998, when a comprehensive report on the study's findings (as well as any legislative proposals) are required to be submitted to the Legislature and the Governor.

Legislature Commissions Study...The Legislature appropriated \$100,000 from state lottery funds to pay for an objective study to determine, among other things, who gambles in Montana, the number of jobs and the amount of income attributable to gambling, the volume of tax revenue received by state and local governments derived from gambling, and the social costs of gambling, including the related burdens on social services and law enforcement agencies and the problems associated with pathological gambling behavior. While a number of such studies have been undertaken in other states, HB 615 reflects the Legislature's judgment that none would have a direct, unassailable bearing on the situation in Montana. In other words, policy makers need state-specific data in order to make well-reasoned decisions affecting the legal status of gambling.

Legislative Services staff are authorized to help administer the Commission's work, and are also charged with the duty to draft and issue a detailed request for proposals (RFP). The study itself will most likely be conducted by a qualified consultant or firm, not a state agency. Further information on the content and procedures for response to the RFP will be available following the Commission's first meeting.

Gambling Conference to be Held...On a related front, the Burton K. Wheeler Center at Montana State University in Bozeman is sponsoring a conference beginning on the evening of September 4 and continuing through the next day entitled "The Future of Gambling in Montana". Governor Racicot has been invited to give the keynote address. The program will also feature a number of nationally recognized experts on gambling, including Professor William R. Eadington, Director of the Institute for the Study of Gambling and Commercial Gaming at the University of Nevada (Reno) and Tim Wapato, Executive Director for the National Indian Gaming Association. For further information and registration materials, call (406) 994-6765.

For further information about the gambling commission, please call Stephen Maly at (406)444-3064 or send an e-mail message to <smaly@mt.gov>.

TRANSPORTATION FUNDING STUDY COMMITTEE

Committee Holds First Meeting...The Transportation Funding Study Committee held its first meeting on Monday, August 18 in Room 104 of the Capitol. Senator Chuck Swysgood was elected Presiding Officer and Representative Ed Grady Vice-Presiding Officer. Cindy Weaver, LFD analyst staffing the Committee, presented a brief overview of House Bill 610, a cash flow analysis of the highways special revenue account (dated June 1997), and a work plan to focus the Committee's efforts during the coming year.

House Bill 610 authorized an interim study of revenues and expenditures of the state's highway special revenue account. The impetus for the study was the 1997 Legislature's concern regarding projections of a declining working cash balance in the highways account resulting in a deficit in the account in fiscal year 2000. The objective of the Committee is to make a thorough assessment of the highways special revenue account and determine legislative solutions intended to stabilize the account while still meeting state transportation goals. The Committee must conclude its work on or before August 1, 1998, providing its recommendations to the Legislative Finance Committee.

To Meet Again in October...The next meeting of the Committee will be on October 20 & 21 in Room 108 of the Capitol. For information on the Transportation Funding Study Committee, please call Cindy Weaver at (406)444-5392, or contact Senator Swysgood.

OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES

Committee Holds First Meeting...On Monday, August 25, the Oversight Committee on Children and Families held its first meeting of the 1997-98 interim. As one of its first orders of business, the Committee unanimously chose Representative Loren Soft as the Presiding Officer and Senator Dorothy Eck as Vice-Presiding Officer. Representative Soft and Senator Eck are two of the three returning members to the Committee; Senator Vivian Brooke completes the triad of veterans. New members are Senators Sharon Estrada and Bill Glaser and Representatives Carolyn Squires, Bill Whitehead, and Bob Lawson.

A chronology of legislative efforts to improve human service delivery in the state and a brief history of the Committee followed the elections. The Committee also reviewed 1997 legislation related to children and families. Susan Fox, Legislative Services Division, updated the Committee on changes to the Youth Court Act and juvenile justice issues.

Child Custody and Visitation...Committee members learned of recent activity in the child custody and visitation arena. House Bill No. 231 generally revised domestic relations statutes, requiring adoption of a parenting plan for divorcing parents that includes specific provisions for the best interests of the child. Doug Sternberg, the Committee's Legal Researcher, explained the legislation (now Chapter 343, Laws of 1997) and informed the Committee that a 5-year (\$50,000 for the first year and \$100,000 for each of the following four years) federal grant is available to states to establish a child visitation and enforcement program. A peculiar twist in Montana's participation is that a line item in the Department of Justice's budget in House Bill No. 2 contains a statement of legislative intent that money received from this grant be directed to district courts. The Department of Public Health and Human Services (DPHHS), with the assistance of district court judges and the Supreme Court Administrator's Office, has submitted Montana's application for grant funds.

Committee Listens to "Wish Lists"...A significant portion of this first meeting was dedicated to presentations of "wish lists". In July, members of the Committee's interested persons list were sent a questionnaire prompting them to convey to the Committee things they would like the Committee to do to assist their organizations and the people they serve. Through this process, the Committee strolled through a virtual Wal-Mart of topics and problems affecting Montanans "from womb to tomb". Mental health, welfare reform, child care, teen pregnancy, substance abuse, developmental disabilities, life skills curricula in the school system, group home provider reimbursement, and children's health insurance were among the topics addressed in the wish lists.

Committee Hears From Agencies...The Committee received an update on the C.S. Porter Pilot Project, in its second year at C.S. Porter Middle School in Missoula. The project, funded by the Interagency Coordinating Council for State Prevention Programs (ICC), is aimed at early intervention and prevention of violence and substance abuse by offering positive experiences directly affecting at-risk kids.

DPHHS staff presented to the Committee background data on domestic violence, aging, teen pregnancy prevention, and child health insurance. Bette Hall, program officer for DPHHS' domestic violence program, reported an increase in federal and state funding that will provide more shelters, particularly on Indian reservations, a batterers' treatment program, and protection for victims.

Mike Hanshew, Administrator for the Senior and Long Term Care Division of DPHHS, told the Committee that Montana's demographics will shift dramatically early in the next century as baby boomers begin to turn 65. He reported that by 2025, 20% of Montana's population will be over 65, compared to 13% currently. This change will undoubtedly have marked impacts on the budgeting of human service agencies, delivery of human services, and general public policy in Montana.

Nancy Ellery, Administrator of the Health Policy and Services Division, discussed DPHHS' interim priorities and offered information on teen pregnancy prevention, early childhood development, and the child health insurance component of the federal Balanced Budget Act. Montana is slated to receive \$47 million over the next 5 years to build on existing health insurance delivery systems and eventually

expand Medicaid eligibility for children. A Child Health Insurance Planning Group has been formed to develop a plan for Montana's allotment. The Committee designated Senators Glaser and Eck to serve on the planning group.

Self-Evaluation Form Considered...Senate Bill No. 94, passed during the 1997 Session, requires the Joint Oversight Committee on Children and Families to conduct a self-evaluation and rate its own effectiveness at the conclusion of each interim. The Committee considered a proposed self-evaluation chart as well as a sample questionnaire to prompt interested persons to rate the Committee's effectiveness. No action was taken to adopt or change either evaluation tool.

Next Meeting to be Held in September...The August 25 meeting was a veritable information deluge during which Committee members learned of or were reminded of the wide range of subjects that fall within their purview. The Committee decided to adjourn without acting on the study plan and agreed to meet next on September 26 for an intensive work session to adopt a course of study for the rest of the interim.

REVENUE OVERSIGHT COMMITTEE

Committee to Meet October 10...The Revenue Oversight Committee will meet at 9 a.m. Friday, October 10 in Room 108 of the State Capitol. Tentative agenda items include:

- ▶ consideration of study plan to examine the taxation of electric utilities and natural gas utilities. SB 390 (electric utility restructuring) and SB 396 (natural gas utility restructuring) requires the Committee to conduct a tax revenue analysis of these utilities;
- ▶ status of Crow Indian Tribe lawsuit for refund of coal severance taxes and coal gross proceeds taxes. This item is contingent upon whether the U.S. Supreme Court has decided to review the case by the October 10 ROC meeting.
- ▶ general fund revenue report from Legislative Fiscal Division;
- ▶ property taxation of intangible property;
- ▶ report on the activities of the Revenue Estimating Subcommittee;
- ▶ report by Montana Coal Board on funding for coal-related impacts; and
- ▶ preliminary analysis of impact of federal Taxpayer Relief Act of 1997 on Montana tax revenue.

Revenue Estimating Subcommittee to Meet October 9...The Revenue Estimating Subcommittee of the Revenue Oversight Committee will meet at 1 p.m. Thursday, October 9 in Room 108 of the State Capitol. The main item for consideration will be a review of the model used for projecting individual income tax collections.

For more information about the Revenue Oversight Committee or to be included on the Committee's interested persons mailing list, contact Jeff Martin at the Legislative Services Division, (406) 444-3064.

ENVIRONMENTAL QUALITY COUNCIL

The EQC to Meet September 18 and 19... The Environmental Quality Council will meet on Thursday and Friday, September 18 and 19. Set out below are some of the issues that the EQC will be reviewing at its up-coming meeting.

Dick Knox Memorial Tree Planting... A tree will be planted on the Capitol grounds in honor of Representative Dick Knox. The ceremony will take place at 1:00 p.m., Thursday, September 18. Representative Knox's family will be in attendance. The Environmental Protection Agency will also be presenting his family with an EPA award for his achievements.

Montana Growth Issues... The Council will look at some baseline data on counties and their growth; efforts of various agencies, organizations, and citizens in Montana; and information compiled in "Our Montana Environment: Where Do We Stand?" The members will then split into smaller brainstorming sessions and identify those issues they want to cover in a growth study.

Waste Tire Study... A working group of 24 individuals involved in waste tire management met with EQC staff on August 19 to identify current problems and suggest alternatives to be investigated during this study. The Council will review those ideas and discuss how it intends to interact with the working group and its recommendations.

Water Policy... The Council has appointed a Water Policy Subcommittee. This Subcommittee will be conducting general water policy oversight on a regular basis this interim, including review of water leasing, renewable resource grant and loan programs, university research, groundwater assessment, the water information system, and others. The Subcommittee will also oversee House Bill 546 implementation (TMDLs).

Montana Environmental Policy Act (MEPA) Implementation... The Council will receive a two hour training session on MEPA implementation. The Department of Environmental Quality will update the Council on its MEPA activities over the 1997-98 interim.

Environmental Self Audit Update... The Department of Environmental Quality will update the Council on the implementation of the environmental self audit legislation that was passed by the 1997 Legislature.

New EQC Publication...The "Final Status of Natural Resource Legislation in the 55th Montana Legislature" (1997 session) is now available in the EQC offices.

For more information about the meeting or to order the "Final Status" please contact the EQC staff at 444-3742.

THE BACK PAGE

During the 1997 Legislative Session, House Bill No. 546 added yet another acronym to the Capitol parlance -- "TMDL" or "Total Maximum Daily Load." One of the major pieces of natural resource-related legislation passed by the 55th Legislature, HB 546 provided more explicit direction to Montana's Department of Environmental Quality (DEQ) on how to implement a major directive of the federal Clean Water Act -- essentially, determine which Montana streams and lakes have water quality problems and take steps to clean them up. TMDLs are tools states can use to address these problems and they will likely be the topic of water quality discussions in Montana for years to come. But first, some background.

WHAT!! NOT ANOTHER ACRONYM...!!?

By Kathleen Williams, Resource Policy Analyst
Legislative Environmental Policy Office

TMDLs AND THE FEDERAL CLEAN WATER ACT (CWA)

As with many states' environmental laws, Montana water quality policy is heavily influenced by federal law and regulations. For example, before a state can issue permits for pollutant discharges into its rivers, it must develop a program that meets Environmental Protection Agency (EPA) requirements. The state is then "delegated" the responsibility for issuing pollutant discharge permits; if a program is not delegated, EPA retains the responsibility to issue the permits.

A primary purpose of the federal Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Though it "recognizes, preserves, and protects" states' responsibilities in water quality protection and resource planning and development, it assigns overall administration of the Act to the federal Environmental Protection Agency.

The Act requires states to adopt water quality standards (WQSs) for the protection of surface water quality. Water quality standards are set based upon the conditions necessary to support the "beneficial uses" assigned to a water body -- those uses the water should support. For example, the beneficial uses assigned to the Bighorn River (above Hardin) are: drinking and food processing (after conventional water treatment); water contact recreation; support of cold-water fish species, other aquatic life, waterfowl, and furbearers; and agriculture and industry. The water quality standards set to support these uses address changes from natural conditions for such parameters as coliform, dissolved oxygen, pH, turbidity (lack of clarity), temperature, color, toxics, and other detrimental or harmful substances.

Changes in water quality from natural conditions typically emanate from either point-source (PS) discharges or non-point source (NPS) discharges. Point-source discharges are from an identifiable entry point (e.g. sewage treatment plant pipe, canal, etc.); non-point sources are those that carry pollutants into waters from broad expanses of land (i.e. not a specific point). Inputs from agricultural operations and timber harvest activities are often non-point sources of water pollution. Point-source discharges are controlled through the state's discharge permit program. NPS discharges are addressed through encouraging voluntary use of certain practices determined to reduce water quality impairments. These are termed "best management practices," or BMPs. Examples of forestry BMPs include; crossing streams at right angles, sizing permanent culverts larger than 15 inches in diameter, and avoiding skidding over drainage areas.

Section 303(d) of the federal Clean Water Act and related regulations require states to assess the condition of the state's waters to determine if their quality is "impaired" (does not meet standards) or "threatened" (is likely to violate standards in the near future). The result of this review is often called the "303(d) list", which must be submitted to EPA every other year. Section 303(d) also requires states to prioritize and target water bodies on their list for TMDL development, and to develop TMDLs for impaired and threatened waters.

In theory, a TMDL is first a determination of which land use is contributing what to water quality conditions in an impaired (or threatened) segment, both point-sources and non-point sources. The calculations must also define and account for natural background water quality conditions. Once those calculations are made, all contributors are assigned an allowable share of the pollutant load that they can discharge. The assignments must incorporate necessary reductions in the parameters causing the segment to be classified as "impaired." Some dischargers may wish to "trade" portions of their allocations with other dischargers, which is allowed. The "total maximum daily load" (TMDL), then, is the total loading of certain pollutants that the water body can accommodate without exceeding water quality standards -- it's the total above natural conditions that (theoretically) gets divvied up among dischargers to an impaired or threatened water body.

A hypothetical (and extremely simplified!) example may be helpful:

Acronym Creek, located near the pastoral (but growing) community of Abbreviation, Montana, has been assigned the same beneficial uses as the Bighorn (see preceding text), and water quality standards have been set accordingly. Land uses affecting water quality of the South Fork of Acronym Creek include cattle ranching, residential subdivisions on septic systems, a small industrial plant, and a small waste treatment plant. The town of Abbreviation draws its drinking water from Acronym Creek.

According to Montana's 303(d) list, water quality in (hypothetical) Acronym Creek is "impaired" due to excess temperature and "threatened" due to increasing turbidity. Contributors to increased temperature have been determined to be a combination of riverfront residents removing streamside vegetation to improve views, the industrial plant's discharge of its cooling process waters, and water withdrawals. In some locations, summertime water temperatures have exceeded 75F, which can be lethal to trout. Turbidity is beginning to affect the ability of fish to feed. High temperatures are contributing to increased algal and weed growth, requiring the Town's one maintenance worker to continually travel to the water plant to clean weeds and algae from the intake. (More on Acronym Creek later.)

THE MONTANA SITUATION -- SETTING THE STAGE FOR HB 546

So, where do we stand in Montana with regard to the mandate of Section 303(d) of the federal Clean Water Act -- to assess and address impaired and threatened waters? Frankly, somewhat better on the "assessing" than the "addressing". Montana's 1996 303(d) list submitted to EPA included about 900 water bodies that had been determined to be impaired or threatened.

Despite the length of the list, as of 1996, only one comprehensive TMDL had been completed in Montana (though several were in progress). One complication was that the DEQ was uncertain whether they had sufficient state statutory authority to aggressively pursue TMDL development in Montana, and even if they did, they lacked the resources to do so. In 1992, seven water bodies had been targeted for TMDL development by 1994. In 1994, all seven were still on the targeted list.

And these issues were not unique to Montana. As of 1996, the EPA was being (or had been) sued in 16 different states based on allegations they had shirked their responsibilities under 303(d) to ensure states moved forward in water quality assessment and TMDL development. EPA was scrambling to defend itself, settle lawsuits, and make some moves nationally to provide greater assistance to states.

At the same time, long-time concerns were again voiced in Montana over whether so many Montana water bodies really deserved to be called "impaired" or "threatened". What criteria were used to make that decision? Were there real "data" to support the conclusion or was it based on "windshield surveys"? Was the state on shaky ground legally if they continued to issue discharge permits on "impaired" streams when TMDLs hadn't yet been developed? Big questions.

The Montana DEQ had achieved more than many other states involved in TMDL-related lawsuits. After all, Montana had made comprehensive efforts on the "assessment"

end. Other states hadn't gotten that far, and the DEQ had been making efforts at water quality improvement through means other than TMDL development for years.

So what happened? In early fall of 1996, the Western Environmental Trade Association (WETA) sponsored a forum on these issues and produced a related Position Paper on TMDL development in Montana. The paper (together with a briefing paper and alternatives analysis prepared by DEQ) provided a starting point for a DEQ-sponsored collaborative effort to draft a legislative proposal to address issues surrounding the 303(d) "list" and what went on it, TMDL development, and all the decisions surrounding the priorities, method, and coordination involved in implementing this mandate of the Clean Water Act. Many hoped that successful TMDL legislation would illustrate that Montana was committed to moving forward on TMDL development. If so, maybe a lawsuit wouldn't be filed, or, if one were, the court might resolve a suit in a manner that retained state autonomy to develop TMDLs.

But on December 2, 1996, what some might have considered inevitable happened. EPA received notification of intent to sue over lack of TMDL progress in Montana. EPA was now in a similar defensive position in Montana, as it had been in Ohio, Kansas, Washington, New York, Georgia, Alaska, Minnesota, Idaho, and others.

The increased potential for a lawsuit added urgency to efforts to address TMDL issues in Montana. If a suit were successful, EPA might be forced by the court to develop TMDLs for Montana; the state would lose authority and EPA had paltry resources to dedicate to such a mandate. The result could be the top-down, heavily regulatory, federal solution to water quality issues in Montana. Not very desirable from a state autonomy point of view! The lawsuit was filed against EPA on February 28, 1997.

The DEQ collaborative effort succeeded in airing many of the concerns of the spectrum of parties that participated. Many compromises were made and issues addressed, but there was not "consensus" on the result before it had to move into the bill drafting stage at the Legislature in late January. Several revisions were incorporated during the drafting stage, and a few amendments during the hearing process, but the bill proceeded through the Legislature and went to the Governor relatively unchanged from its introduced version. Other bills authorized approximately \$2 million in former and new funding, as well as 9 new positions (FTEs), to dedicate to the efforts covered in HB 546.

HB 546 -- MORE THAN AN ACRONYM..

HB 546 was requested by Sen. Grosfield and sponsored by Rep. Tash. What did it do? In general HB 546:

- ▶ defined the terms necessary to move forward in TMDL development and provided stronger legal authority to do so;

- ▶ required the state to monitor state waters to accurately assess their quality and to develop TMDLs for impaired and threatened waters;
- ▶ set procedures on how to determine whether "sufficient credible data" was used in developing the 303(d) list, required that waters lacking such data be removed from the list by October, 1999, and allowed persons to petition DEQ to add to or remove a water body from the list;
- ▶ required DEQ to consult with local watershed advisory groups and conservation districts in developing and revising the list and in developing TMDLs, set up a statewide advisory group to advise on prioritization, and set out criteria to be used in determining priorities for TMDL development;
- ▶ specified that TMDL development must include quantified load allocations for point source discharges and development of voluntary Best Management Practices (BMPs) for non-point sources;
- ▶ required monitoring of the success of TMDL strategies and reevaluation of the approach if water quality standards are not achieved on waters with TMDLs within 5 years; and
- ▶ provided a 1-year time frame to determine how to develop necessary TMDLs, and a 10-year time frame to do it.

Quite a charge, but also a strong message that the Legislature was serious about addressing the TMDL issue in Montana.

So how might our hypothetical Acronym Creek be affected by HB 546 implementation? Though extremely simplified (and very optimistic!), one scenario might be as follows:

Due to growing concern over the water quality in Acronym Creek, local residents, representatives of the local conservation district, and some town officials had recently started meeting to discuss what might be done. With the passage of HB 546 and because Montana's 303(d) list showed Acronym Creek as a high priority for TMDL development, DEQ staff contacted these folks and offered their assistance with finding solutions to the temperature and turbidity problems.

State water quality staff traveled to Abbreviation, reviewed the condition of the Creek, took water quality samples, and met with residents and others regarding potential solutions. They calculated estimates of the share of the pollutant loading that might be

attributable to certain land uses, and determined how much the total loading might have to be reduced to bring the Creek back into compliance with water quality standards.

After several meetings among residents and state and local officials, it was determined that if half of the total length of the currently denuded stream banks could be revegetated, temperature fluctuations might be reduced over a period of a few years to the point of compliance with standards. Since the vegetation might also hold more sediment in place, the turbidity should also be reduced, thereby resolving that problem automatically.

The owner of the ranching operation agreed that if plantings were of no cost to him, and he was successful in getting a grant to fence off his cattle from all but select portions of the Creek, the revegetation could occur along bare portions of his creek frontage. Several residential property owners agreed to include their creek frontage in the revegetation project, too.

DEQ and the conservation district helped to develop an affordable planting list (mostly willows) and mapped the locations for revegetation. They documented the calculations and solution as Acronym Creek's TMDL, and the Creek was removed from the 303(d) list.

The following spring the conservation district sponsored the willow slip cutting and planting and a town potluck in the park afterwards. Monitoring over the following two years showed that temperature fluctuations had decreased, and the water intake was less problematic. Kids were catching more fish in the Creek, too.

CURRENT AND FUTURE CHALLENGES...

HB 546 addressed many issues brewing in Montana in 1996. But, many still remain, and the bill itself created its own challenges. For example, the issue of how to determine when a water body meets or doesn't meet standards; does one exceedence during a flood or drought event automatically qualify it as impaired? Also, petitions are already coming in to delist waters. HB 546 gives DEQ 60 days to answer a petition, and answers require analysis. And, if much of the emphasis is on a locally-driven, voluntary approach, is that consistent with the mandate to get the job done in 10 years? There will be increasing numbers of TMDLs to monitor and evaluate; lots of coordination which needs to happen; a statewide advisory group that needs to be staffed; a big state; a starting list of 900+ TMDLs that need to be done; multiple issues for each water body; and the lawsuit.

Many challenges loom. As one DEQ staffer put it, the greatest challenge in HB 546 implementation is "*finding efficient approaches to TMDL development that get the job done water quality-wise; achieve a high level of local buy-in; and are politically correct, cost-effective, and minimally burdensome on landowners (financially, culturally, and otherwise)*".

WANT TO KNOW MORE?

If the acronyms and complexity have not put you off, there are a variety of ways to track the progress of this program.

- 1) You can request to be added to DEQ's TMDL mailing list.
- 2) The Legislature's Environmental Quality Council (EQC) will be providing legislative oversight to the HB546 implementation and assisting with policy-related issues -- you can keep in touch with either EQC staff or EQC members regarding these efforts.
- 3) You can locate and participate in TMDL-related efforts in your area -- there are currently TMDLs being developed for the Upper Clark Fork, Flathead Lake, Tenmile Creek (Helena area), and others. Either DEQ or EQC can provide you with a current list of TMDL efforts in the state.
- 4) HB 546 implementation is an on-going effort requiring continued funding to progress at a sustained level over the 10-year time frame. Legislators can prepare to effectively review the progress of this program during upcoming legislative sessions.

AND FOR YOU AAs (ACRONYM ADVOCATES)...

The entire foregoing can be summarized as follows:

Section 303(d) of the CWA requires MT to assess SWs and list WQLs. TMDLs must be developed for WQLs, and EPA must ensure states make progress in doing so. Montana has a list, but not many TMDLs. Despite WETA holding a forum, DEQ developing a PP and AA and starting a bill draft, EPA got a NOI in December. The DEQ product went to LSD, and HB 546 resulted, providing specific direction and authority to DEQ for TMDLs, the list, coordinating with the SAG and WAGs, developing and incorporating BMPs for NPS discharges and developing WAs and WLAs. They have a year to figure out how to do it, and 10 years to get it done. The EQC's

WPC will be tracking DEQ's progress over the 97-98 interim, including the use of the new FTEs, and can fill you in on the progress.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

SEPTEMBER

September 1, Labor Day, legal holiday

September 2, Oversight Committee on State Management Systems, Room 104,
1 p.m.

September 6, Private Prisons Subcommittee of Correctional Standards and
Oversight Committee, Room 104

September 11, Subcommittee on Veterans' Needs, V.A. Hospital, Fort Harrison,
Helena, 8 a.m.

September 12, Legislative Council, Room 104, 9 a.m.

September 12, Administrative Code Committee, Room 108, 10 a.m.

September 18, Interim Property Tax Committee, Miles Community College, Miles
City, 1 p.m. and 7 p.m.

September 19, Interim Property Tax Committee, Forsyth High School Auditorium,
Forsyth, 9 a.m.

September 18 and 19, Environmental Quality Council, Room 104, 8 a.m.

September 25, Oversight Committee on Children and Families, Room 104

OCTOBER

October 2, Committee on Public Employee Retirement Systems, Room 108

October 2, Correctional Standards and Oversight Committee, tour of Montana State Prison, Deer Lodge

October 3, Correctional Standards and Oversight Committee, Community Center, Deer Lodge, 9 a.m.

October 2 and 3, Legislative Finance Committee, Room 104

October 6 and 7, Electric Utility Restructuring Transition Advisory Committee, Billings

October 7, Committee on Indian Affairs, tour of Northern Cheyenne Indian Reservation

October 8, Committee on Indian Affairs, Lame Deer

October 9, Revenue Estimating Subcommittee of ROC, Room 108, 1 p.m.

October 10, Revenue Oversight Committee, Room 108, 9 a.m.

October 13, Columbus Day observed, legal holiday

October 17, Committee on Postsecondary Education Policy and Budget, Room 108

October 20 and 21, Transportation Funding Study Committee, Room 108

October 30 and 31, Interim Property Tax Committee, Dillon and Butte

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